



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2009-0026]

Curtis-Straus LLC: Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision granting the renewal of recognition of Curtis-Straus, LLC, as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

DATES: The renewal of recognition for Curtis-Straus, LLC, becomes effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: David W. Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3655, Washington, DC 20210, phone (202) 693-2110, or email at johnson.david.w@dol.gov.

SUPPLEMENTAL INFORMATION:

I. Notice of Final Decision

The Occupational Safety and Health Administration (OSHA or "the Agency") is giving notice that it is granting the renewal of recognition of Curtis-Straus, LLC (CSL), as a Nationally Recognized Testing Laboratory (NRTL). OSHA is taking this action following the requirements under its NRTL Program regulations, 29 CFR 1910.7, and its

procedures for NRTL application and renewal, Appendix A to 29 CFR 1910.7 (hereafter “Appendix A”).

OSHA recognition of an NRTL signifies that the organization meets the legal requirements in the NRTL Program regulations. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products in the workplace approved properly by the NRTL to meet OSHA standards that require testing and certification.

Appendix A.I.B describes the procedures that OSHA must use in deciding an NRTL's application for renewal of recognition. To approve such an application, the NRTL must meet all of the requirements for recognition in 29 CFR 1910.7. Appendix A.I.B lists the steps OSHA must follow in reviewing each renewal application, and provides the NRTL opportunities to correct or respond to any perceived failures to meet the specified requirements.

After following the process set forth in Appendix A.I.B, OSHA grants renewal of CSL's recognition as an NRTL. OSHA carefully reviewed CSL's original application for renewal, its revised application for renewal, and all related documents, including informal communications between CSL and OSHA, public comments received in response to OSHA's preliminary finding to deny renewal, and publicly available information concerning the ownership and organization of CSL. In this regard, OSHA preliminarily determined that CSL failed to satisfy one of the regulatory requirements for continued NRTL recognition – i.e., the requirement that NRTLs be “completely independent of

employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes” (29 CFR 1910.7(b)(3)).

However, under OSHA’s independence policy, found in Appendix C to the NRTL Program Directive (OSHA Instruction CPL 01-00-003-CPL 1-0.3), even if an NRTL is not free of commercial, financial, and other pressures that could compromise the results of the testing and certification processes, it may still retain its recognition if it complies with conditions that OSHA may impose. CSL proposed several conditions, both before, and in response to, OSHA’s preliminary finding, to address its ability to comply with the NRTL independence requirement. In this notice, OSHA accepts the conditions proposed by CSL, and also develops additional conditions, to resolve the issues surrounding CSL’s independence. Therefore, OSHA grants renewal of CSL’s NRTL recognition and imposes on CSL conditions with which CSL must comply to retain its NRTL recognition. OSHA sets forth its findings in this matter in greater detail below under Section III (“Discussion of CSL’s Independence”) and Section IV (“Summary and Analysis of Additional Comments”).

Docket No. OSHA-2009-0026 contains all public materials in the record concerning OSHA’s preliminary decision to deny NRTL recognition to CSL. The public may obtain or review copies of these documents by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-2625, Washington, DC 20210. Documents in the record also are available electronically at www.regulations.gov.

II. Background

A. The NRTL Program and the NRTL Renewal Process

Many of OSHA's safety standards require employers to use products tested and certified as safe (see, e.g., 29 CFR 1910, subpart S). In general, testing laboratories, and not employers, perform the required testing and certification. To ensure that the testing and certification performed on products is appropriate, OSHA implemented the NRTL Program. The NRTL Program establishes the criteria that a testing laboratory must meet to achieve, and retain, NRTL recognition.

OSHA recognition of an NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7, the regulatory provision containing the requirements an organization must meet to become an NRTL and retain NRTL status. Recognition is an acknowledgment by OSHA that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. Recognition under the NRTL Program, therefore, enables employers to use products approved by NRTLs to meet OSHA standards that require product testing and certification. OSHA maintains an informational Web site for each NRTL that details its scope of recognition. These pages are available on OSHA's Web site at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

Under OSHA's procedures for NRTL recognition, a prospective NRTL must submit an application for recognition under the NRTL Program (Appendix A.I.A). Once granted, OSHA's recognition of an NRTL is valid for five years unless OSHA terminates the NRTL's recognition before the end of the five-year period (Appendix A.I.B.7). To renew its recognition, an NRTL must file a renewal request with OSHA not less than nine

months, or more than one year, before the expiration date of its current recognition (Appendix A.II.C.1). An NRTL seeking renewal may file, with its renewal request, any additional information the NRTL believes will demonstrate its continued compliance with the terms of its recognition and 29 CFR 1910.7 (Appendix A.II.C.2). Per OSHA practice, if OSHA did not conduct an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, OSHA will schedule the necessary on-site assessments prior to the expiration date of the NRTL's recognition.

Appendix A sets forth the procedures for renewal. These procedures provide NRTLs with several opportunities to present information to the Agency to justify their continued recognition under the NRTL Program.

Pursuant to Appendix A, after an NRTL applies for renewal, OSHA staff makes a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) as to whether the NRTL continues to meet the NRTL Program requirements set forth in 29 CFR 1910.7 (Appendix A.I.B.2). If the staff reaches a negative finding, OSHA notifies the applicant, in writing, of this finding and allows a reasonable period for a response (Appendix A.I.B.3.a). In providing this response, the applicant may either: (1) submit a revised application for further review by OSHA staff; or (2) request that the staff forward the original application, along with a statement provided by the applicant of reasons supporting the application, to the Assistant Secretary to determine whether the renewal application warrants approval (Appendix A.I.B.3.b.(i)). An NRTL notified of a negative finding may submit a revised application for further review by OSHA staff only once during each recognition process (Appendix A.I.B.3.b(ii)).

After OSHA staff provides its recommendation, the Assistant Secretary makes a preliminary finding as to whether the applicant meets the requirements for renewal of recognition (Appendix A.I.B.4.a). OSHA then notifies the applicant of the preliminary finding, and also publishes a notice of the preliminary finding in the Federal Register (Appendix A.I.B.4.b). This notice provides the public an opportunity to comment on the applicant's ability to meet the recognition requirements (Appendix A.I.B.5). If OSHA receives a comment objecting to the preliminary finding, OSHA may, at the discretion of the Assistant Secretary, initiate a special review of any information provided in the record that requires resolution. During the special review, OSHA supplements the record either by seeking additional public comment or convening an informal hearing (Appendix A.I.B.7). At the conclusion of the process (either after the public-comment period closes or at the conclusion of the discretionary special review, if conducted), the Assistant Secretary renders a final decision, based on a preponderance of the evidence, as to whether the NRTL seeking renewal continues to meet the requirements for recognition (Appendix A.I.B.7.c).

If an NRTL files a timely and sufficient renewal request, the current recognition of an NRTL does not expire until the Assistant Secretary renders a final decision (Appendix A.I.C.2.c). If the Assistant Secretary grants the NRTL's application for renewal, the NRTL's recognition is valid for five years unless terminated before the expiration of the period (Appendix A.I.B.7).

B. The NRTL Independence Requirement

OSHA requires that NRTLs and applicants be "completely independent of employers subject to [OSHA's] tested equipment requirements, and of any manufacturers or vendors

of equipment or materials being tested for these purposes” (see 29 CFR 1910.7(b)(3)).

This independence requirement is fundamental to the third-party testing and certification system, as the requirement ensures that the organizations testing and certifying specified products as safe have no affiliation with the manufacturers or vendors of the products, or with employers that use the equipment or products in the workplace.

OSHA’s NRTL Program Directive specifies the approach for judging an NRTL’s or applicant’s compliance with the Agency’s independence requirement under 29 CFR 1910.7. The policy recognizes that certain relationships between an NRTL and any manufacturer of products that require NRTL certification can affect the objectivity and impartiality of an NRTL’s testing and certification procedures.

The policy provides that, to meet the independence requirement, NRTLs and applicants “must be free from commercial, financial and other pressures that could compromise the results of its testing and certification processes” (see NRTL Program Policies, Procedures, and Guidelines – CPL 01-00-003 – CPL 1-0.3 (hereafter, “NRTL Program Directive”), Appendix C.V). Pursuant to this policy, OSHA presumes that these pressures exist if there is a substantial relationship between the NRTL or applicant and a manufacturer, vendor, or major user “of products that must be certified which could compromise objectivity and impartiality in determining the results of its testing and certification processes” (*id.*). The term “substantial” for purposes of the policy, means that the relationship is “of such a nature and extent as to exert undue influence on the testing and certification processes” (*id.*). The factors that signify that an NRTL or applicant has an impermissible “substantial relationship” include, but are not limited to, the following: (1) the NRTL or applicant is “organizationally affiliated” with a

manufacturer, vendor, or major user “of products that an NRTL must certify”; (2) the NRTL or applicant “is owned in excess of two percent (2%) by a [manufacturer or vendor] or major user, or their major owners”; (3) the NRTL or applicant “receives significant financing from a [manufacturer or vendor] or major user, or their major owners”; or (4) a “person holding a substantial position with the NRTL [or applicant] has a significant financial interest in a [manufacturer, vendor,] or major user, or is a director or key personnel of either” (id.).

OSHA cannot perform in-depth analyses of an NRTL's or applicant's ownership or financial relationship and interests. Therefore, pursuant to the policy, an NRTL or applicant can rebut the presumption that pressures exist by “present[ing] clear and convincing evidence” that it is independent, and that any relationship with a manufacturer or employer involves no, or only minor, pressures (id.).

Finally, pursuant to this policy, OSHA may prescribe “conditions” on NRTLs or applicants for initial or continued recognition, even when the Agency determines that pressures exist (id.). Such conditions “must be consistent with th[e] policy” (id.). The independence policy provides examples of options OSHA may consider when imposing conditions: (1) restricting the suppliers for whom the NRTL or applicant may test and certify products; or (2) restricting the type of products the NRTL or applicant may test and certify (id.).

Whether imposing conditions on an NRTL or applicant is appropriate is a judgment made by the Agency on a case-by-case basis. As OSHA stated in an earlier Federal Register notice, in analyzing these situations, OSHA must examine carefully: the ownership situation; the types of products at issue; the scope and magnitude of the

NRTL's or applicant's operations; the scope and magnitude of the operations of the manufacturers that are making, and the employers that are using, the products; and other factors (see 72 FR 24619, May 3, 2007). OSHA also must consider the degree to which it can monitor the NRTL or applicant's compliance with any imposed conditions, which is a particularly important factor (id.).

OSHA audits NRTLs regularly to ensure they continue to meet the NRTL requirements, including the independence requirement, and to maintain the quality of their testing and certification operations. If imposing conditions on an NRTL or applicant would be difficult or impossible for OSHA to audit effectively, then imposing such conditions on the NRTL or applicant would not be appropriate.

C. Wendel's Pressures on CSL

In May of 2005, Bureau Veritas Consumer Products Services, Inc. (BVCPS), acquired CSL (OSHA-2009-0026-0014).¹ At the time, Bureau Veritas Holdings, Inc. (BVH), owned BVCPS; Bureau Veritas SA (BVSA) owned BVH; and Wendel Investissement (Wendel) owned BVSA (id.) Wendel describes itself as a “hands-on investor” that “invest[s] for the long term as the majority or leading shareholder in listed or unlisted companies, taking the lead in order to accelerate their growth and development” (OSHA-2009-0026-0028).

As of September 2012, Wendel continued to be the largest shareholder of BVSA, owning approximately 51 percent (OSHA-2009-0026-0038), and BVSA's 2011 annual report showed that it wholly owns CSL (OSHA-2009-0026-0037).² Wendel also owned approximately six percent of Legrand, a manufacturer of electrical products based in

¹Citations to the record take the following format: “(OSHA-2009-0026-00XX).”

²OSHA understands that BVSA's ownership of CSL occurs through several intermediate, wholly owned, subsidiaries of BVSA.

France (OSHA-2009-0026-0038). Legrand has world-wide operations in the U.S., many European countries, Canada, Mexico, various South American countries, and China, as well as other parts of Asia (OSHA-2009-0026-0027). Wendel also owns additional manufacturers, vendors, or users of products, some of which require NRTL certification prior to use in the workplace (OSHA-2009-0026-0038). As Wendel is an investment company, it may acquire additional companies that manufacture, sell, or use products that require NRTL testing and certification.

D. CSL's Application for Renewal and OSHA's Preliminary Finding

CSL applied to OSHA for its initial recognition in February 1998, when it was a limited liability company chartered in the Commonwealth of Massachusetts. After processing the application, including performing the necessary on-site assessments, OSHA announced its preliminary finding on the application in a notice published in the Federal Register on December 13, 1999 ([64 FR 69552](#)). Following the requisite comment period, OSHA issued a notice in the Federal Register on May 8, 2000, announcing its final decision to recognize CSL as an NRTL for a five-year period ending on May 9, 2005 ([65 FR 26637](#)).

CSL filed a timely application for renewal of its recognition as an NRTL, on June 4, 2004 (OSHA-2009-0026-0012). The address of the testing facility (site) that OSHA recognizes for CSL, and the address submitted by CSL for renewal, is: Curtis-Straus LLC., One Distribution Center Circle, Suite #1, Littleton, Massachusetts 01460.

On April 27, 2007, OSHA informed CSL by letter that CSL appeared not to meet the policy on independence specified in the NRTL Program Directive due to BVSA's acquisition of CSL (OSHA-2009-0026-0013). OSHA asked CSL to provide clear and

convincing evidence that pressures did not exist as a result of its organizational affiliation with Legrand (id.).

In submissions to OSHA dated August 27, 2007, and January 31, 2008, CSL asserted that it would rebut the presumption of pressures (OSHA-2009-0026-0014; OSHA-2009-0026-0015). First, CSL described the “longstanding integrity” of BVSA and CSL. Second, CSL claimed an attenuated relationship existed between CSL and Legrand. Third, CSL argued that a Compliance Committee implemented by CSL, as well as the objectivity of CSL's testing program, would mitigate any undue influence. Fourth, CSL argued that “firewalls” existed to assure the independence of CSL's testing and certification processes.³ Fifth, CSL asserted that the presence of common executives and board members between Legrand, Wendel, and BVSA did not compromise the integrity of CSL's testing and certification because there was “no reason to believe that [the board members] would seek to cause a complex international conspiracy to compromise CSL.”

OSHA responded to CSL's assertions on August 14, 2008, and reiterated the following concerns it had about CSL's independence: (1) the substantial relationship that arose from Wendel's common ownership of both Legrand, a manufacturer, and CSL, an NRTL; (2) the common executives and board members shared between BVSA, CSL, Wendel, and Legrand; (3) how CSL would monitor Wendel's future acquisitions; (4) how CSL would warrant to OSHA that it would not test or certify either Legrand's or its competitor's products; (5) how CSL would comply with the requirements of the

³These “firewalls” were measures or factors that CSL claimed mitigate or prevent undue influence on its NRTL activities. CSL's firewalls included a separation of its board of directors from some of the other entities in the corporate organizational chart, use of independent auditors, and establishment of the Compliance Committee.

International Federation of Inspection Agencies (IFIA)⁴ specifying that auditors be independent of the testing organization; and (6) how CSL would ensure the personnel performing the audits have the necessary qualifications (see OSHA-2009-0026-0016).

On February 20, 2009, CSL described its efforts to: (1) monitor Wendel's acquisitions; (2) perform enhanced certification procedures on products manufactured by subsidiaries and other companies organizationally affiliated with Wendel; and (3) use both external and internal audits to ensure that CSL maintains its independence (OSHA-2009-0026-0017). CSL asserted that it would accomplish these efforts through: (1) extensive procedures it has in place to identify public Wendel subsidiaries; (2) its conflict-management procedures that require additional witnessing and review of test data on products produced by Wendel subsidiaries; (3) audits by internal compliance officers; (4) and IFIA membership. CSL also informed OSHA that it was changing its executive leadership and augmenting its board of directors with additional independent directors to dilute the potential for undue influence on the board. However, the mutual board members shared between BVSA, Legrand, and Wendel would remain on their respective boards.

OSHA fully considered CSL's efforts to rebut the presumption of undue influence. On January 19, 2010, the Agency made a negative finding of renewal (OSHA-2009-0026-0018). OSHA based its decision, in part, on concerns that OSHA would not be able to effectively monitor CSL's monitoring, certification, and auditing efforts because of the extent and complexity of Wendel and Legrand's operations. OSHA stated that it does not

⁴The IFIA is a trade association that represents companies involved in international testing, inspection, and certification services. It requires members to adhere to a compliance code that includes independent auditing by IFIA for compliance with IFIA standards (see "About Us" IFIA, <http://www.ifia-federation.org/content/about-us>, accessed 5/11/2012).

have the resources or expertise to monitor all of Wendel's and Legrand's current or future acquisitions, products, and operations.

In response to the negative finding of renewal, CSL submitted a revised application for renewal on October 18, 2010 (OSHA-2009-0026-0019). The revised application reiterated CSL's commitment to objective testing, the procedures of the CSL Compliance Committee, and requirements of the external audits. CSL also proposed a temporary limitation in which CSL would limit its testing and certification to existing clients and products. Moreover, on August 1, 2011, CSL notified OSHA that Wendel reduced its ownership of Legrand from 32 to 11.1 percent (OSHA-2009-0026-0020).

After considering CSL's submissions, on October 11, 2011, OSHA issued a preliminary finding denying CSL's application for renewal (see OSHA-2009-0026-0002 (76 FR 62850)). Comments were due by November 10, 2011, which OSHA later extended to December 14, 2011 (see OSHA-2009-0026-0004 (76 FR 73686, Nov. 29, 2011)). OSHA's preliminary finding explained in detail the Agency's reasons why CSL did not meet the requirements for continued recognition.

OSHA received eight comments in response to its preliminary determination on CSL's application for renewal. OSHA addresses those comments below under Section III ("Discussion of CSL's Independence") and Section IV ("Summary and Analysis of Additional Comments").

III. Discussion of CSL's Independence

A. Introduction

In this Federal Register notice, OSHA finds that CSL meets the regulatory requirement that it be "completely independent of employers subject to [OSHA's] tested

equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes” (see 29 CFR 1910.7(b)(3)). CSL is not “free from commercial, financial and other pressures that could compromise the results of its testing and certification processes,” nor did it rebut successfully the presumption that pressures exist by “present[ing] clear and convincing evidence” that it is independent, and that any relationship with a manufacturer or employer involves no, or only minor, pressures ((NRTL Program Directive, Appendix C.V). However, OSHA can prescribe conditions on CSL that are consistent with its independence policy (*id.*). CSL proposed several conditions, both before, and in response to, OSHA’s preliminary finding, to address its ability to comply with the NRTL independence requirement. In this notice, OSHA accepts most of the conditions proposed by CSL, and also develops additional conditions, to resolve the issues surrounding CSL’s independence. Therefore, OSHA is granting the renewal of CSL’s NRTL recognition, and imposes on CSL conditions with which CSL must abide to retain its recognition.

B. Pressures on CSL

In its preliminary finding, OSHA found that CSL has a “substantial relationship” with Legrand because Wendel owned, at least in part, both CSL and Legrand. At the time OSHA made its preliminary finding, Wendel, through various intermediaries, owned approximately 58 percent of CSL and approximately 11 percent of Legrand. Legrand is a manufacturer of various products, many of which require NRTL testing and certification if used in the workplace. OSHA found that, under its NRTL independence policy, this relationship constitutes a “substantial relationship,” in which a major owner of a supplier of products requiring NRTL testing and certification has an ownership interest in excess

of two percent in CSL, an NRTL. Because of this substantial relationship, OSHA presumed that pressures exist on CSL that could compromise the results of its testing and certification processes, and that CSL, therefore, is not independent.

In various letters submitted to OSHA prior to the Agency's preliminary finding, and in its comments to the preliminary finding, CSL explained why it believed it was not subject to pressures from Wendel or Legrand that could compromise the results of its testing and certification processes. The Agency carefully considered this information, and found that CSL did not adequately rebut the presumption of pressures.

In trying to rebut the presumption of pressures, CSL contended, prior to OSHA issuing the preliminary finding, that the "relationship of Legrand or other Wendel holdings is highly attenuated" (OSHA-2009-0026-0019) and, as such, this relationship does not result in undue influence on CSL. CSL argued that Wendel is a long-term investor that does not manage CSL's day-to-day operations. CSL also noted that Wendel does not exert control over CSL, therefore assuring CSL's independence from Wendel and Legrand.

As OSHA found in the preliminary finding, CSL's assertion that Wendel does not manage or exert control over CSL's day-to-day operations does not address the fundamental issue regarding the control that a parent company has over a majority-owned subsidiary. According to the United States Securities and Exchange Commission, the term "control" in this context means the "possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise" (see [17 CFR 230.405](#)). The parent company of a majority-owned subsidiary, in this case CSL, has ultimate control

over the subsidiary, even though the parent company may delegate some of that control to the subsidiary. A parent company can exert control by changing a subsidiary's policies and leadership, and even by selling the subsidiary. Therefore, OSHA found in the preliminary finding, that, because Wendel has the power to dictate and pressure CSL's actions, CSL does not have decisionmaking independence.

Further, although CSL claimed, prior to OSHA issuing the preliminary finding, an “attenuated” connection to Wendel, CSL did not provide any assurances that Wendel would refrain from exerting control over CSL, or from pressuring CSL through Bureau Veritas. To the contrary, OSHA found that Wendel has a corporate policy that encourages exerting control over Bureau Veritas and CSL. Wendel's web site, accessed near the time OSHA issued its preliminary finding, stated that Wendel’s “policy is to be the key or controlling shareholder in its listed or unlisted investments on a long-term and hands-on basis. It expresses this commitment by actively participating in these companies' strategic decisions, based on the principle of direct, constructive and transparent give-and-take with their managers” (<http://www.wendel-investissement.com/en/charte-de-lactionnaire—83.html>).⁵ Furthermore, although CSL notified OSHA that Wendel reduced its percentage ownership of Legrand from 32 to 11.1 percent in 2011 (OSHA-2009-0026-0020), CSL did not provide any assurance that this reduction in ownership eliminated Wendel's control over CSL. Furthermore, Wendel could increase its ownership interest at any time. Therefore, OSHA found in the preliminary finding that, although it could impose a condition to limit such an increase in ownership, the fundamental issue of Wendel's control over CSL would remain.

⁵Web page no longer accessible. OSHA accessed this Web page prior to issuing its preliminary finding, and the Agency relied on it only for that purpose.

CSL also claimed prior to OSHA issuing the preliminary findings that, because no member of its Board of Managers has “significant ties” to any of BVSA's parent companies, there is little opportunity for these companies to exert pressures on CSL (OSHA-2009-0026-0019). OSHA found, in the preliminary findings, that the current organizational relationship between CSL and Wendel via BVSA does not rebut the presumption of pressures. When Wendel first purchased CSL, BVSA and CSL shared two key executives (Mr. Frank Piedelievre, who was a member of BVSA's management board, as well as CSL's chairman, and Mr. Francois Tardan, who also was on BVSA's management board and is CSL's treasurer). At the time OSHA issued the preliminary finding, Wendel and BVSA shared one board member. According to the Web sites of Wendel and BVSA, accessed near the time OSHA issued its preliminary finding, Mr. Ernest-Antoine Seillière was the Chairman of Wendel's Supervisory Board, as well as a member of BVSA's Board of Directors

(<http://www.bureauveritas.com/wps/wcm/connect/bv-com/Group/Home/Investors/Corporate—governance> and <http://www.wendel-investissement.com/en/members-32.html>).⁶

Furthermore, CSL asserted, prior to OSHA issuing the preliminary finding, that individuals affiliated with Wendel and Legrand are no longer members of its Board of Managers (OSHA-2009-0026-0017). However, OSHA found that, based on the information provided by CSL, several BVSA-affiliated members remained on CSL's board: Mr. John Beisheim was Vice President of Acquisitions and Risk Management at BVCPS, and Mr. Oliver Butler was a Senior Vice President at BVCPS (OSHA-2009-

⁶The Web pages containing this information are no longer accessible. OSHA accessed these pages prior to issuing its preliminary finding, and the Agency relied on it only for that purpose.

0026-0017). BVCPS is a subsidiary of BVSA, which is a subsidiary of Wendel. OSHA found that this arrangement perpetuates a direct line of communication and pressure between Wendel and CSL by way of BVSA because BVSA controls BVCPS and senior officers at BVCPS control CSL. In summary, OSHA concluded that the modifications CSL made to its Board of Managers provided little organizational separation between CSL and Wendel and, therefore, did not adequately rebut the presumption of pressures.

In response to the preliminary finding, CSL notified OSHA that Wendel further reduced its ownership of Legrand from 11.1 to 5.8 percent (OSHA-2009-0026-0006). CSL also reiterated earlier assertions that the degree of Wendel's ownership of Legrand attenuated the relationship between Legrand, Wendel, and CSL (*id.*). Moreover, in June 2013, Wendel divested itself of Legrand (see Ex. OSHA-2009-0026-0053).

This divestment does not rebut the presumption of pressures associated with the substantial relationship between Wendel and CSL. First, it appears that the actual and potential control Wendel maintains of CSL still exists. As of September 2012, Mr. Ernest-Antoine Seillière, Chairman of Wendel's Supervisory Board, and Mr. Frédéric Lemoine, Chairman of Wendel's Executive Board, as well as two key Wendel executives (Mr. Stephane Bacquaert, Wendel Managing Director for Investment, and Mr. Jean-Michel Ropert, Wendel Chief Financial Officer), sat on the Board of BVSA (OSHA-2009-0026-0030; OSHA-2009-0026-0041; OSHA-2009-0026-0042; OSHA-2009-0026-0043). In addition, Mr. Lemoine was Vice Chairman of BVSA's Board (OSHA-2009-0026-0030; OSHA-2009-0026-0043). As OSHA stated in the preliminary finding, this arrangement perpetuates a direct line of communication and pressure between Wendel and CSL by way of BVSA (76 FR 62854, October 11, 2011).

Second, as OSHA stated in the preliminary finding, Wendel also had an ownership interest in Campagnie Deutsche, a “manufacturer of industrial and automotive electrical connectors, some of which may require NRTL certification prior to use in the workplace” (OSHA-2009-0026-0002). While Wendel also sold its interest in Campagnie Deutsche (OSHA-2009-0026-0038; OSHA-2009-0026-0044) as of September 2012, Wendel had a 17.1 percent ownership interest in Saint-Gobain, which manufactures, sells, or distributes products that would require NRTL approval if used in U.S. workplaces. In this regard, the company stated that it “play[s] a significant role in renewable energy development, focusing on solar power solutions with a presence across the value chain – from component supply and photovoltaic module manufacturing to distribution – and in several markets, including photovoltaic panels and solar heating systems” (OSHA-2009-0026-0045).

In addition, in July 2011, Wendel, through its subsidiary Oranje-Nassau Development (an international private-equity firm), acquired at least two other companies that manufacture and sell electrical equipment that likely require NRTL approval—Mecatherm and exceet Group SE (OSHA-2009-0026-0031; OSHA-2009-0026-0038). As of September 2012, Wendel had a 98.1 percent ownership interest in Mecatherm, a “[l]eader in industrial bakery equipment” that “designs, assembles and installs automated production lines for bakery products throughout the world” (OSHA-2009-0026-0047). Wendel had a 28.4 percent ownership interest in exceet Group SE as of December 31, 2012; exceet Group SE is a “European market leader in embedded intelligent electronic systems” that “designs, develops and produces customized and essential components for blue chip clients, particularly in the fields of medical and healthcare, industrial

automation, financial services, security, avionics and transportation,” and has a “portfolio rang[ing] from complex electronic modules and systems that are generally integrated in costly devices, smart-cards and chips, which are produced in small and medium quantities.” (OSHA-2009-0026-0046). Mecatherm manufactures and sells electric ovens, coolers, and freezers for bakery-production lines, and exceet Group SE manufacturers and sells a number of different types of electric devices, including medical devices and control panels for electrical industrial equipment (OSHA-2009-0026-0048; OSHA-2009-0026-0049). Both of these companies sell their products in the United States (see OSHA-2009-0026-0046; OSHA-2009-0026-0047) and, if used in a U.S. workplace, the products would require NRTL approval. Thus, Wendel is a major owner of these companies, and OSHA believes Wendel could exert undue influence on CSL to certify products made, sold, or used by these companies or reject products made, sold, or used by these companies’ competitors.

Moreover, CSL does not control Wendel, and OSHA would have no authority to impose a condition that would override Wendel’s authority to become a major owner of other companies that are manufacturers, vendors, or major users of products that an NRTL must test and certify. That Wendel could become a major owner of other companies that are manufacturers, vendors, or major users of products that an NRTL must test and certify is a distinct and realistic possibility. Wendel is an investment company with the stated purpose to “invest for the long term as the majority or leading shareholder in listed or unlisted companies, taking the lead in order to accelerate their growth and development” (OSHA-2009-0026-0028). Therefore, Wendel’s divestment of

ownership in Legrand does not provide clear and convincing evidence to rebut the presumption of pressures that exist as a result of CSL's affiliation with Wendel.

Finally, OSHA notes that, in response to the preliminary finding, a member of the BVCPS board of directors claimed an "absence of pressures by or through [the BVCPS] Board upon Curtis-Straus LLC (CSL) to certify any products under the scope of its NRTL recognition" (OSHA-2009-0026-0007). In support of this claim, the board member asserted that "while CSL and BVCPS share board members, there is no common board membership between either BVCPS or CSL and either BVSA, Wendel, or Legrand"; "national and international certification schemes have been satisfied by CSL's ability to implement reasonable controls"; "there are no NRTL certifications by CSL for Legrand, Legrand affiliates or any other entities owned by Wendel"; and Wendel "reduce[d] its ownership stake in Legrand . . . to a mere 5.8%" (*id.*).

OSHA rejects the commenter's claim primarily for the reasons stated in OSHA's preliminary finding. For the most part, the commenter restates arguments that OSHA rejected in its preliminary finding, but does not provide substantive evidence to rebut the presumption of pressures. OSHA addressed Wendel's divestment in Legrand above, and addresses CSL's ability to implement reasonable controls below. Accordingly, neither CSL nor the member of the BVCPS board of directors provided any additional information that would rebut the presumption of pressures.

C. Imposing Conditions on CSL is Consistent with OSHA's Independence Policy

In its preliminary finding, OSHA determined that it cannot impose conditions on CSL that would assure its independence because, in large part, OSHA cannot reliably monitor the various CSL and Wendel ownership arrangements, and the affiliations Wendel has

with its numerous subsidiaries. The Agency's policy on independence provides an approach to determining whether an organization meets the requirement for independence (76 FR 62855, October 11, 2011). Consistent with this policy, OSHA does not require its staff to analyze extensive and complex actual or potential business activities that could cause conflicts and pressures. Moreover, OSHA found that, when these activities are as extensive and complex as they are for the world-wide operations of Wendel, this information is far beyond OSHA's auditing capabilities under the NRTL Program. Therefore, OSHA concluded in the preliminary finding that it would be unreasonable for it to determine with its existing resources the extent to which Wendel-affiliated companies contribute to the sale and manufacture of products submitted to CSL for NRTL testing and certification (id.).

In response to this finding, CSL proposed hiring an outside contractor, at CSL's expense, to monitor all mergers and acquisitions of CSL's clients and ensure that none of these transactions involve a Wendel subsidiary or a Wendel-affiliated product. CSL determined that this condition, in concert with "extensive safeguards" proposed by CSL before OSHA issued its preliminary finding, would cure the "matter of 'infeasibility' of monitoring [those] mergers and acquisitions" (OSHA-2009-0026-0005).

OSHA finds this recent condition proposed by CSL, in concert with other conditions proposed by CSL and the additional conditions developed by OSHA, to be consistent with OSHA's independence policy. OSHA believes, with certain qualifications discussed below, that the use of a third party to examine the mergers and acquisitions associated with CSL's clients will allow OSHA to monitor Wendel's vast operations and ensure that

none of CSL's transactions involve a Wendel subsidiary or a product manufactured by a Wendel subsidiary.⁷

In this respect, OSHA notes that Wendel could exert pressure on CSL to certify products containing components manufactured or sold by a Wendel subsidiary. While CSL stated, prior to OSHA issuing the preliminary finding, that "[w]e are willing to not test or certify [such] products" (OSHA-2009-0026-0017), OSHA believes the use of a third party to examine components used in CSL-certified products also will allow OSHA to ensure that none of CSL's transactions involve components or products manufactured by Wendel subsidiaries.

Moreover, OSHA had concerns that Wendel could exert undue influence on CSL to reject products made, sold, or used by the competitors of a Wendel subsidiary that makes, sells, or uses NRTL approved products. OSHA believes that the use of a third party to examine whether CSL's transactions involve products manufactured, sold, or distributed by the competitor of a Wendel subsidiary would alleviate this concern. OSHA notes that it will carefully monitor the effectiveness of this condition, and will reconsider this condition if it appears to be ineffective. OSHA also is imposing the following additional conditions on CSL:

Ethical constraints and firewalls. Prior to the preliminary finding made by OSHA, CSL informed OSHA of several self-imposed ethical constraints and firewalls that ensure that it does not succumb to any pressures resulting from the control Wendel could exert over CSL. For example, CSL asserted that, because it is an affiliate of BVSA, it is required to "adhere to a compliance program that meets the standards of, and has been

⁷While this discussion refers to Wendel, it pertains to any organization that may develop a subsequent ownership interest in CSL.

approved by,” the International Federation of Inspection Agencies (“IFIA”) (OSHA-2009-0026-0014). CSL also has a policy of requiring its staff to remain objective and avoid conflicts of interest when conducting product testing (id.). For example, CSL has external auditing policies, and, according to CSL, its external auditors perform several functions, including: (1) conducting annual reviews and risk-based audit sampling on whether CSL’s corporate-compliance programs and internal-management systems meet the IFIA ethical standards; and (2) conducting investigations of ethics violations (id. and Exhibit F thereto). In another example, CSL indicated that it was establishing a Compliance Committee to, among other functions, “provide oversight to make sure that no influence or pressure is exercised by any affiliate of Curtis-Straus on any employee of Curtis Straus” (id.).

OSHA believes that the ethical constraints and firewalls CSL imposes on itself are vital to CSL maintaining complete independence as required by OSHA’s NRTL Program regulations. Therefore, OSHA imposes on CSL, as a condition of its renewal, that CSL maintain the ethical constraints and firewalls described here, and all other ethical constraints and firewalls described by CSL in its submissions to OSHA in conjunction with its application for renewal. These submissions include the following exhibits in the docket: comment from Michael Buchholz, Curtis-Straus LLC, OSHA-2009-0026-0005; Ex. 4 - CSL letter to OSHA, dated 8-27-2007, OSHA-2009-0026-0014; Ex. 5 - CSL letter to OSHA, dated 1-31-2008, OSHA-2009-0026-0015; Ex. 7 - CSL letter to OSHA, dated 2-20-2009, OSHA-2009-0026-0017; and Ex. 9 - CSL Revised Renewal Application, dated 10-18-2010, OSHA-2009-0026-0019.

Composition of boards. As stated above, a member of the BVCPS board of directors asserted that “while CSL and BVCPS share board members, there is no common board membership between either BVCPS or CSL and either BVSA, Wendel, or Legrand” (OSHA-2009-0026-0007). OSHA agrees with the BVCPS board member that restricting access to the boards of BVCPS and CSL will help minimize the risk of undue influence by Wendel. Therefore, OSHA imposes on CSL, as a condition of its renewal, that neither CSL nor BVCPS share any common board members with Wendel, BVSA, or any other Wendel subsidiary.

OSHA believes that the proposed conditions, in combination with the additional conditions developed by OSHA, are consistent with OSHA’s independence policy. The additional conditions provide for a third-party monitor to evaluate CSL and Wendel transactions and submit to OSHA reports of any findings that result from the monitor’s activities, thereby ensuring that OSHA has adequate oversight of these transactions. Therefore, OSHA finds that, even though CSL is still not free of the commercial, financial, and other pressures that could compromise the results of its NRTL testing and certification processes, CSL may still retain its recognition if it complies with the conditions specified herein.

D. OSHA’s Position on Conditions Imposed on NRTLs

Prior to the preliminary finding made by OSHA, CSL argued that OSHA imposed conditions in the cases of Intertek Testing Services NA, Inc. (Intertek), National Technical Systems, Inc. (NTS), and Wyle Laboratories, Inc. (Wyle), and that these cases indicate that OSHA also should impose conditions in CSL’s case (OSHA-2009-0026-

0019). OSHA rejected these arguments in the preliminary finding, but now is reconsidering this decision.

In the Intertek case, Intertek's parent acquired, and merged into Intertek's overall laboratory operations, a small manufacturer of laboratory test equipment, Compliance Design. Consequently, Intertek lost its independence because its parent company owned a manufacturer of equipment that needed NRTL approval. OSHA, however, imposed a condition on Intertek's recognition that effectively eliminated the pressures associated with Intertek's relationship with Compliance Design ([66 FR 29178, May 29, 2001](#)). This condition included a “no-testing” policy for Compliance Design, and for any other manufacturer affiliated with Intertek. Although OSHA received no information showing that Intertek or its parent owned any other manufacturing interest, the Agency imposed the broader condition as a precaution. OSHA found that it could impose this condition because, unlike CSL's situation, Compliance Design was a small company that produced just one type of product; therefore, OSHA found that Intertek could enforce the no-testing policy. Consequently, OSHA found that it had the resources to monitor effectively Intertek's compliance with the independence policy because of Compliance Design's limited operations. OSHA found in the preliminary finding that CSL's situation is much different than Intertek's because Wendel's and Legrand's operations involve multiple products manufactured and sold by numerous and variable subsidiaries, making it difficult for OSHA to impose conditions on CSL's recognition that would mitigate all of the pressures, and that OSHA could monitor reasonably and effectively.

OSHA also imposed a condition on [Wyle \(59 FR 37509\)](#). When OSHA granted Wyle NRTL recognition, Wyle was part of an organization with a division that

manufactured and distributed electronic-enclosure cabinets. As with Intertek, the condition imposed on Wyle required that Wyle not test or certify any equipment that used electronic enclosures manufactured by this division. In its preliminary finding, OSHA found that, unlike CSL's situation, this condition was easy for Wyle and OSHA to monitor because the only product at issue was electronic-enclosure cabinets.

Lastly, OSHA imposed conditions on NTS ([63 FR 68306, December 10, 1998](#)). NTS was a public company that “could conceivably perform the design and engineering services . . . for manufacturers or vendors of the products covered within the scope of the test standards for which OSHA has recognized NTS” ([63 FR 68306, December 10, 1998](#)). Because NTS is a public company, OSHA had a concern that manufacturers or vendors could acquire ownership of NTS. Accordingly, OSHA imposed a condition on NTS that restricted it from testing and certifying products for a client to which it sells design, or similar, services. OSHA also required NTS to provide OSHA an opportunity to review NTS's NRTL Quality Manual, Quality Assurance Procedures, and other procedures within 30 days of certifying its first products under the NRTL Program ([63 FR 68306, 68309, December 10, 1998](#)). OSHA imposed these conditions only as a preemptive measure because, unlike the CSL case, there was no evidence in the record that any manufacturers or vendors owned NTS, or that NTS was providing design and engineering services to manufacturers or vendors. In the preliminary finding, OSHA determined that, in the case of CSL, Wendel’s ownership of a manufacturer and the potential for indirect affiliation with numerous other manufacturers and vendors that were beyond OSHA’s capability to track results in a presumption of pressure that violates the NRTL independence policy.

As stated above, OSHA now imposes on CSL, as a condition of its renewal, that CSL hire an outside contractor, at its expense, to (1) monitor all mergers and acquisitions of CSL's clients; (2) ensure that none of CSL's transactions involve Wendel, a Wendel subsidiary, or a product or component made by such a subsidiary; and (3) ensure that products that fail to attain NRTL certification from CSL, or components of such products, are not made, sold, or used by competitors of Wendel or Wendel subsidiaries. The combination of CSL's proposed conditions renders CSL's case similar to that of Intertek, NTS, and Wyle. As noted earlier, OSHA believes that the use of a third party to examine the mergers and acquisitions involving CSL's clients will allow OSHA to monitor Wendel's vast operations and ensure that CSL maintains its independence.

In its comments to the preliminary finding made by OSHA, CSL also asserted that OSHA should apply the same conditions to CSL as OSHA applied to TUV Rheinland PTL, LLC (TUVPTL), in a Federal Register notice (76 FR 16452) dated March 23, 2011⁸ (see the list of questions from CSL attached to OSHA-2009-0026-0021). Arizona Technology Enterprises (AzTE), a company that acts as an agent to license technologies and that takes an equity stake in the companies that commercialize them, is a partial owner of TUVPTL (76 FR at 16453-54).⁹ However, OSHA found little potential, and no actual, pressures associated with AzTE's ownership of TUVPTL (*id.*). As OSHA stated in TUVPTL's final notice of recognition, the vast majority of AzTE's technologies do not

⁸CSL also asked why its ownership and management were more complex than that of Underwriters Laboratories, Inc. (UL), and SGS U.S. Testing Company, Inc. (SGS) (see the list of questions from CSL attached to OSHA-2009-0026-0021). CSL asked further "what concerns for independence were raised by OSHA with regard to UL's acquisition of Springboard Engineering, a company offering engineering advisory services to improve product reliability." However, OSHA did not impose conditions related to independence on either UL or SGS, and CSL did not provide a cogent explanation of the relevance of its situation to that of UL and SGS.

⁹While AzTE is only one of the owners of TUVPTL, OSHA found that the remaining equity stakes of AzTE did not provide any potential independence conflicts, and, thus, presented no potential sources of undue influence on TUVPTL (76 FR at 16453-54).

involve the types of products for which OSHA requires NRTL approval (id. at 16454). In fact, only one of its licensed technologies may require NRTL approval, and the company to which AzTE licensed that technology apparently was not manufacturing any products at the time of OSHA's recognition of TUVPTL. Therefore, at the time OSHA issued its final decision on TUVPTL's application, there was no violation of OSHA's independence policy because a major owner of a manufacturer, vendor, or major user of products requiring NRTL approval, or their major owners, did not have an ownership interest in TUVPTL in excess of two percent (NRTL Program Directive, Appendix C.V).

Nevertheless, OSHA believed it was appropriate to impose conditions on TUVPTL's recognition "[t]o address future business ventures by AzTE" and to "avoid any situation that could conflict with OSHA's NRTL independence requirement" (76 FR at 16454, March 23, 2011). Accordingly, OSHA requires AzTE to annually report the companies in which it has an ownership interest, as well as a description of each of the company's business purposes (id. at 16455). OSHA also requires that TUVPTL not test or certify any product manufactured, distributed, or sold by a company owned in excess of 2 percent by AzTE, and that TUVPTL cease certifications related to the NRTL Program if (1) AzTE has more than a 10 percent ownership interest in a company; (2) OSHA determines that such a company or one of its subsidiaries, affiliates, or significant owners, either makes, distributes, or sells a type of product for which OSHA requires NRTL approval (i.e., one currently shown in OSHA's Web page titled "Type of Products Requiring NRTL Approval"); and (3) OSHA determines that the risk of actual or potential undue influence resulting from this ownership is not minor (id.). Finally,

OSHA requires the implementation of various conditions to allow OSHA to monitor TUVPTL's independence (id.).

While TUVPTL's situation differs from that of CSL, OSHA finds that it can impose conditions on CSL for reasons similar to the reasons that it used to justify imposing conditions on TUVPTL. Specifically, the conditions OSHA imposes on CSL (described more fully below in Section V, "Final Decision," below) will help identify and prevent transactions that may involve a current or future product of one of Wendel's subsidiaries.

Finally, OSHA finds CSL's situation to be different than that of Electrical Reliability Services, Inc. (formerly Electro-Test, Inc. (ETI)), in which OSHA denied ETI's application for renewal of its NRTL recognition (73 FR 35415-01, June 23, 2008). When applying to renew its NRTL recognition, ETI had a substantial relationship with its owner, Emerson Electric Company, and, therefore, OSHA presumed that pressures existed that could compromise the results of ETI's testing and certification processes (ETI Preliminary Finding, 72 FR 24617-01, 24620, May 3, 2007). OSHA found that ETI did not sustain its burden of rebutting the presumption of pressures, despite ETI's established policy that it would not knowingly perform NRTL testing, evaluation, or certification work for Emerson-owned companies, because, in relevant part: (1) ETI's policy did not address the direct ownership relationship that existed between ETI and Emerson and the control that Emerson could assert over ETI's operations; (2) ETI's corporate no-testing policy appeared to address only final products manufactured by Emerson, and not component parts; (3) Emerson's operations and product lines were so vast that OSHA seriously doubted ETI's ability to effectively enforce its own policy; (4) it would be virtually impossible for OSHA to monitor ETI's corporate no-testing policy;

and (5) OSHA's did not have the resources to audit ETI's independence because Emerson's operations were in constant flux, and because Emerson was continually buying and selling new companies (id. at 24620-22). In summary, OSHA found that it could not impose conditions on ETI's recognition because the scope of products that Emerson produced was enormous, and OSHA did not have the resources to monitor the various ownership relationships and affiliations ETI had with Emerson's numerous subsidiaries (id. at 24622).

OSHA took these considerations into account in analyzing CSL's application for renewal, thereby assuring consistent application of conditions. However, in performing this analysis, OSHA found CSL's situation to be different than that of ETI because CSL proposed a condition, which OSHA accepted, that enables OSHA, with existing resources and auditing capabilities, to monitor Wendel and its subsidiaries.

Accordingly, OSHA's determination regarding the imposition of conditions on CSL's NRTL recognition is consistent with the Agency's previous actions. Although, CSL is not entirely free of the commercial, financial, and other pressures that could compromise the results of the NRTL testing and certification processes, OSHA finds that it is able to impose conditions that are consistent with the NRTL Program's independence policy and that will enable it to monitor and audit those conditions effectively.

IV. Summary and Analysis of Additional Comments

As noted above, OSHA received eight comments in response to its preliminary determination on CSL's application for renewal. When appropriate, OSHA addressed some of these comments in the preceding section. OSHA responds to the remaining comments in this section.

A. Validity and Application of the NRTL Independence Policy

CSL questioned the basis of the NRTL Program's independence policy and how OSHA applies that policy to existing NRTLs (see the list of questions from CSL attached to OSHA-2009-0026-0021).¹⁰ CSL and one other commenter raised concerns about the potential economic impact associated with denying CSL's application for renewal (OSHA-2009-0026-0008; see the list of questions from CSL attached to OSHA-2009-0026-0021). Other commenters asked OSHA to consider every possible renewal condition within its scope of authority (OSHA-2009-0026-0008; OSHA-2009-0026-0009; OSHA-2009-0026-0010; OSHA-2009-0026-0011).

OSHA specifies its independence requirement in 29 CFR 1910.7, and this requirement is fundamental to the NRTL system of third-party testing and certification. Independence is, in many ways, the cornerstone of the NRTL Program, ensuring that those organizations that certify the safety of workplace products are not owned by, affiliated with, or subject to pressures by manufacturers or vendors of the products, or by employers that may use the products. OSHA imposed the independence requirement on NRTLs to ensure that such ownerships or affiliations do not compromise the NRTLs' testing and certification of these products in such a way as to render the products unsafe for use in the workplace. As explained above, OSHA's NRTL Program Directive specifies under 29 CFR 1910.7 an approach for judging an NRTL's or applicant's compliance with the Agency's independence requirement. The policy recognizes that

¹⁰Many of the other questions in CSL's list addressed oversight of OSHA's NRTL Program, OSHA's deliberative process, and other issues that go beyond the scope of this final determination (see the list of questions from CSL attached to OSHA-2009-0026-0021). Therefore, OSHA is not addressing these questions in this Federal Register notice. The remaining questions addressed issues such as the actual or potential pressure exerted by Wendel on CSL, whether it is appropriate for OSHA to impose conditions on CSL, and does OSHA apply its independence policy consistently (*id.*). OSHA addressed these issues in other sections of this notice.

certain relationships between an NRTL and any manufacturer, supplier, or user of products that require NRTL certification can affect the objectivity and impartiality of the NRTL's testing and certification procedures.

The independence policy extends to any parent, or ultimate parent, of an NRTL or NRTL applicant, and applies equally to all NRTLs and applicants. OSHA's policy is to review the independence of each organization when it applies to the NRTL Program, during routine audits of NRTL testing and certification facilities, and again when an existing NRTL applies to renew its recognition under the NRTL Program. For these reviews, OSHA takes into consideration the same organizational and management factors that it did for CSL. In the event OSHA identifies relationships that raise doubt about an NRTL's independence, OSHA will follow the same procedure as it did for CSL.

OSHA has a duty to American workers to ensure that NRTLs meet the independence requirement because failure to do so could compromise testing and, thereby, lead to the introduction of unsafe products in the workplace. The benefit to the American worker resulting from the integrity of the NRTL Program far outweighs any adverse effects that may result from denying an application for renewal because an NRTL does not meet the independence requirement. Employers may expose workers to serious hazards when they do not use a properly approved NRTL product as required by an OSHA standard. NRTL approval ensures that a product meets applicable test-standard requirements and will operate safely in the workplace. For example, NRTL approval ensures that an electric product will operate at its rated voltage, current, and power, and will not exceed specified limits and pose hazards to the workers who use the product. These hazards include

electric shock, arc flash, blast events, electrocution, equipment shorts, explosions, burns, fires, and toxic atmospheres generated by burning and decomposing materials.

Because of the vital importance of the independence requirement to assuring the use of safe products in the workplace, the question of the potential economic impact associated with denying CSL's application was not a factor in OSHA's final determination in this matter. Accordingly, OSHA did not consider the economic-impact arguments made by commenters (OSHA-2009-0026-0008; see the list of questions from CSL attached to OSHA-2009-0026-0021).

In reviewing CSL's application for renewal, OSHA followed Agency policy and examined whether it could impose conditions on CSL's recognition that would be consistent with the NRTL Program independence policy. As described above, OSHA found that it could impose such conditions.

B. CSL's Proposal to Implement an Independent Board of Managers

CSL suggested, as an alternative to its third-party monitoring proposal, that it could eliminate pressures by ceding its certification authority to an independent board of managers, and that OSHA could appoint one of the members of this board (OSHA-2009-0026-0005). This alternative now is moot because OSHA is implementing instead CSL's third-party monitoring proposal as a condition of renewal. OSHA notes, however, that it would be inappropriate for its representative to sit on a CSL board of managers because of the ethical concerns that may arise under such an arrangement; in addition, this alternative would involve OSHA directly in a laboratory's certification process, which is contrary to the basic purpose of the NRTL Program.

C. CSL's Request for a Hearing

CSL requested that OSHA convene a special review and a hearing to address its application for renewal (OSHA-2009-0026-0005). Pursuant to Appendix A to 29 CFR 1910.7, if the public objects to OSHA's preliminary finding on an application for renewal of an NRTL's recognition, OSHA may, at the discretion of the Assistant Secretary, initiate a special review of any information provided in the public record that appears to require resolution. During the special review, OSHA supplements the record either by reopening the public comment period or convening an informal hearing (see Appendix A.I.B.7 of 29 CFR 1910.7). The Assistant Secretary hereby denies CSL's request to convene a special review and hearing. CSL's request now is moot because OSHA is granting CSL's application for renewal. Moreover, no information provided in the public record appears to require resolution.

V. Final Decision

Pursuant to the authority granted to it under 29 CFR 1910.7, OSHA hereby gives notice of the renewal of recognition of CSL as an NRTL. In making this determination, OSHA thoroughly reviewed CSL's request for renewal of recognition and all other pertinent information provided by CSL and other commenters. CSL made an acceptable proposal that satisfies the NRTL Program policies regarding independence found in Appendix C to the NRTL Program Policies, Procedures, and Guidelines Directive (OSHA Instruction CPL 01-00-003-CPL 1-0.3). OSHA accepted the conditions proposed by CSL and developed additional conditions to address issues surrounding CSL's independence. Based on OSHA's examination of comments made in response to the preliminary notice, it finds that CSL meets the requirements of 29 CFR 1910.7 for renewal of its recognition. This renewal is subject to the original terms of CSL's recognition (65 FR 26637, May 8, 2000) and its existing scope of recognition, as well as

the conditions of renewal specified below. Failure to comply with these conditions may result in OSHA revoking, or imposing additional limits on, CSL's NRTL recognition.

Definitions

The following definitions apply specifically to CSL and the conditions of the renewal of recognition as an NRTL:

Affiliate of CSL – Wendel and any Wendel subsidiary.

Failure to attain NRTL certification – A product fails to attain NRTL certification when a product submitted by a client of CSL for testing and certification does not meet one or more test parameters or requirements, as defined in an appropriate NRTL Program test standard.

Wendel subsidiary – An entity is a Wendel subsidiary when either Wendel, or an entity below Wendel in the organizational chain between Wendel and CSL (e.g., BVSA or BVCPS), has a net ownership interest of more than two percent in that entity.¹¹

Conditions of Renewal

1. Third-Party Monitoring

(a) A third-party monitor shall review CSL's independence.

(b) CSL shall bear full financial responsibility for the cost of services rendered by the third-party monitor.

(c) OSHA shall retain final approval over any third-party monitor chosen by CSL to conduct the monitoring.

¹¹For example, an entity would be a Wendel subsidiary if Wendel owns 50 percent of an entity that owns 10 percent of that entity. Here, Wendel's net ownership interest in that entity would be 5 percent (i.e., 50 percent of a 10 percent ownership interest). On the other hand, an entity would NOT be a Wendel subsidiary if Wendel owns 50 percent of an entity that owns 2 percent of that entity. In this second example, Wendel's net ownership interest in that entity would be 1 percent (i.e., 50 percent of a 2 percent ownership interest).

(d) CSL must submit the name of the third-party monitor for the coming year (beginning January 1) to OSHA on or before October 1 of the prior year.¹²

(e) The third-party monitor shall monitor CSL's clients and each client's products that are subject to NRTL certification to determine, in a timely fashion, and with due diligence and all reasonable speed, whether:

(i) Wendel, or any Wendel subsidiary, manufactures, distributes, sells, or uses any products that CSL tests or certifies under the NRTL Program; and

(ii) Wendel, or any Wendel subsidiary, manufactures, distributes, sells, or uses any components in products that CSL tests or certifies under the NRTL Program;

(f) Should a product manufactured by a CSL client fail to attain NRTL certification from CSL, the third-party monitor also shall determine, in a timely fashion, and with due diligence and all reasonable speed, whether Wendel, or any Wendel subsidiary, manufactures, sells, distributes, or uses a product that competes with the client's product or with a component in the client's product.

(g) The third-party monitor shall provide to OSHA a separate report 10 days after making an affirmative finding under Conditions 1(e)(i), 1(e)(ii), or 1(f); the report shall include the basis for making the affirmative finding:^{13,14}

(h) The third-party monitor shall also provide to OSHA, by December 31 of each year:

¹²To cover the period following publication of this notice until January 1, 2015, CSL must submit the name of the third-party monitor to OSHA within 30 days following the date of publication of this notice.

¹³The basis shall include a statement indicating the net ownership interest that Wendel, and entities below Wendel in the organizational chain between Wendel and CSL (e.g., BVSA and BVCPS), have in the clients or Wendel subsidiaries that are the subjects of the affirmative finding, and an explanation of how the third-party monitor calculated net ownership.

¹⁴The third-party monitor shall send any of the information required or requested by OSHA to: Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3655, Washington, DC 20210, or by email to NRTLProgram@dol.gov.

(i) An annual report listing each component contained in each product certified by CSL, including the manufacturer, distributor, and vendor of the component; and

(ii) An annual report listing the names of Wendel's directors, BVSA's directors, BVCPS's directors, and CSL's directors, and, for each named director, a listing of all other Wendel subsidiaries for which the named director is a member of the board of directors.

(i) In complying with Condition 1:

(i) The third-party monitor may rely exclusively on all information and documentation that the third-party monitor receives from CSL pursuant to the information-sharing and documentation-sharing requirements specified for CSL in Conditions 2(b)(i)(A), 2(b)(i)(B), and 2(d)(i), below.

(ii) The third-party monitor also may rely exclusively on the information and documentation that the third-party monitor receives from CSL pursuant to the information-sharing and documentation-sharing requirements specified for CSL in Condition 2(b)(i)(C) below to the extent that CSL provides a list of components in products requiring NRTL certification. The third-party monitor shall perform its own independent search for the manufacturers, distributors, and vendors of those components in accordance with Condition (1)(i)(iii) below.

(iii) The third-party monitor shall perform its own search for all other information and documentation required by Condition 1. In so doing, the third-party monitor:

(A) Must ensure that this search is independent of the other information and documentation it receives from CSL pursuant to the information-sharing and documentation-sharing requirements specified for CSL in Conditions 2 and 4, below; and

(B) May use the other information and documentation it receives from CSL pursuant to the information-sharing and documentation-sharing requirements specified for CSL in Conditions 2 and 4 below, but only in conjunction with the information and documentation the third-party monitor obtains in its own independent search.

(iv) The third-party monitor shall inform OSHA immediately of any information or documentation it obtains in its own independent search that is inconsistent with the information or documentation it receives from CSL pursuant to the information-sharing and documentation-sharing requirements specified for CSL in Conditions 2 and 4 below.

2. Information and Documentation Provided by CSL

(a) CSL shall cooperate fully in the efforts of the third-party monitor to perform the monitoring specified herein.

(b) On or before July 1 of each year, CSL shall provide OSHA and the third-party monitor with the following information and documentation:

(i) A list, in electronic format, of CSL's clients having product(s) requiring NRTL certification, and which includes, at a minimum:

(A) Each client's name and address;

(B) The name(s) and model number(s) of each product requiring NRTL certification; and

(C) Each component in each product requiring NRTL certification, including, to the extent CSL has knowledge, the manufacturer, distributor, and vendor of each component;

(ii) A list, to the extent it has knowledge, of Wendel subsidiaries, that contains the following information and documentation:

(A) For each Wendel subsidiary in the list, a statement indicating:

1. The net ownership interest that Wendel, and entities below Wendel in the organizational chain between Wendel and CSL (e.g., BVSA and BVCPS), have in that Wendel subsidiary;
2. An explanation of how CSL calculated net ownership; and
3. A description of that Wendel subsidiary's business purpose.

(B) To the extent it has knowledge, whether Wendel, or any Wendel subsidiary, manufactures, distributes, sells, or uses a type of product shown on OSHA's Web page at <http://www.osha.gov/dts/otpca/nrtl/prodcatg.html>.

(C) For each Wendel subsidiary in the list, the record(s) or document(s) that describe the net ownership interest that Wendel, and entities below Wendel in the organizational chain between Wendel and CSL (e.g., BVSA and BVCPS), have in that Wendel subsidiary.

Note to Condition 2(b)(ii)(C): CSL does not need to provide to OSHA, or to a third-party monitor, record(s) or document(s) it provided to OSHA and that third-party monitor in prior years (unless those documents have been updated or amended), but it must note in the list that it previously provided such record(s) or document(s) to OSHA and that third-party monitor. However, if the

third-party monitor is new, then CSL must provide these records and documents to the new third-party monitor within 30 days of replacement (see Condition 2(g) below).

(iii) A list, to the extent it has knowledge, of CSL's client(s) which have product(s) requiring NRTL testing and certification, and are either Wendel itself or a Wendel subsidiary.

(iv) A list, to the extent it has knowledge, indicating those products for which Wendel, or any Wendel subsidiary, manufactures, distributes, sells, or uses a product that CSL tests or certifies under the NRTL Program; and

(v) A list, to the extent it has knowledge, indicating those products for which Wendel, or any Wendel subsidiary, manufactures, distributes, sells, or uses a component(s) in a product that CSL tests or certifies under the NRTL Program; included in this list shall be the component(s) that Wendel, or any Wendel subsidiary, manufactures, distributes, sells, or uses.

(c) CSL shall report to the third-party monitor and OSHA any product that fails to attain NRTL certification from CSL within 30 days of such an event; in so doing, CSL shall indicate, to the extent it has knowledge, whether Wendel, or any Wendel subsidiary, manufactures, sells, distributes, or uses a product that competes with the product that failed to attain NRTL certification, or that competes with a component in the product that failed to attain NRTL certification.

(d) CSL shall report to the third-party monitor and OSHA when it begins testing and certifying product(s) under the NRTL Program either for a new client, or an existing client for which it did not previously test and certify product(s) under the NRTL Program, within 30 days of beginning such testing and certifying; in so doing, CSL shall

provide the third-party monitor and OSHA with the following information and documentation:

- (i) The new client's or existing client's name and address;
- (ii) To the extent CSL has knowledge, whether the new client or existing client is either Wendel itself or a Wendel subsidiary.
- (iii) If the new client or an existing client is a Wendel subsidiary:
 - (A) Information on the net ownership interest that Wendel, and entities below Wendel in the organizational chain between Wendel and CSL (e.g., BVSA and BVCPS), have in that Wendel subsidiary;
 - (B) An explanation of how CSL calculated net ownership;
 - (C) A description of that Wendel subsidiary's business purpose; and
 - (D) Record(s) and document(s) that describe the net ownership interest that Wendel, and entities below Wendel in the organizational chain between Wendel and CSL (e.g., BVSA and BVCPS), have in that Wendel subsidiary..
- (e) CSL shall provide to OSHA and the third-party monitor corrected, completed, and updated information or documentation, within 30 days after it becomes aware that the information or documentation it provided to OSHA and the third-party monitor under Conditions 2 or 4 was, or has become, incorrect, incomplete, or outdated.
- (f) CSL shall provide, in addition to the information and documentation required from CSL under Conditions 2 and 4, any information or documentation requested by either OSHA or the third-party monitor within 30 day of such a request, or an explanation as to why it cannot provide the requested information or documentation.

(g) If a new third-party monitor replaces the existing third-party monitor, CSL shall provide to the new third-party monitor, within 30 days of replacement, a copy of all information and documentation that CSL provided to the previous third-party monitor in accordance with Conditions 2 and 4.

(h) To comply with Conditions 2 and 4, CSL shall perform, and shall attest in its submissions to OSHA and the third-party monitor that it performed, an active and complete search, both within and outside CSL, for the information and documentation required by Conditions 2 and 4.

3. OSHA Determination

(a) After reviewing an affirmative finding of the third-party monitor (see Conditions 1(g) and (1)(i)(iv)), or any other information or documentation concerning CSL's independence, OSHA will make a determination about whether to amend CSL's scope of recognition (by, e.g., disallowing CSL from testing and certifying a product(s) that it could otherwise test and certify under its scope of recognition) or revoke CSL's recognition.

(b) In making a determination under Condition 3(a), OSHA will, among other factors, independently determine whether:

(i) Wendel, or a Wendel subsidiary, is a manufacturer, distributor, vendor, or major user of a product that CSL tests or certifies under the NRTL Program;

(ii) Wendel, or a Wendel subsidiary, is a manufacturer, distributor, vendor, or major user of a component in a product that CSL tests or certifies under the NRTL Program;

(iii) Wendel, or a Wendel subsidiary, manufactures, sells, distributes, or is a major user of, a product that competes with a product that failed to attain NRTL certification from CSL; and

(iv) Wendel, or a Wendel subsidiary, manufactures, sells, distributes, or is a major user of, a product that competes with a component in a product that failed to attain NRTL certification from CSL.

(c) If OSHA makes a determination under Condition 3(a) to amend CSL's scope of recognition, OSHA shall notify CSL of its determination and give CSL an opportunity to oppose the determination.¹⁵ Accordingly, CSL may either:

(i) Accept OSHA's determination, in which case CSL shall abide by the determination; or

(ii) Oppose OSHA's determination, in which case CSL shall:

(A) Within 10 days of notification, inform OSHA in writing of its opposition to the determination; and

(B) Within an additional 30 days, provide OSHA with a written rebuttal to OSHA's determination.

(iii) OSHA shall notify CSL if CSL does not rebut OSHA's determination to OSHA's satisfaction, and, after notification, OSHA shall:

(A) Give CSL 10 days from receipt of notification to withdraw its opposition; and

(B) If CSL does not withdraw its opposition in the specified time, take appropriate action pursuant to the procedures in Appendix A to 29 CFR 1910.7.

¹⁵OSHA may make a determination under Condition 3(a) to revoke CSL's recognition outright, without undertaking the procedures described in following paragraphs (i) through (iii); in such a case, OSHA will take appropriate action pursuant to the procedures in Appendix A to 29 CFR 1910.7.

4. Ethical Constraints and Firewalls

(a) CSL shall maintain the ethical constraints and firewalls described in this notice, and all other ethical constraints and firewalls described by CSL in its submissions to OSHA in conjunction with its application for renewal.

(b) The submissions specified in Condition 4(a) include the following exhibits in the docket:

- (i) Comment from Buchholz Michael, Curtis-Straus LLC, OSHA-2009-0026-0005.
- (ii) [Ex. 4 - CSL letter to OSHA, dated 8-27-2007](#), OSHA-2009-0026-0014.
- (iii) [Ex. 5 - CSL letter to OSHA, dated 1-31-2008](#), OSHA-2009-0026-0015.
- (iv) [Ex. 7 - CSL letter to OSHA, dated 2-20-2009](#), OSHA-2009-0026-0017.
- (v) [Ex. 9 - CSL Revised Renewal Application, dated 10-18-2010](#), OSHA-2009-0026-0019.

(c) Examples of the ethical constraints and firewalls with which CSL must comply include the following:

- (i) CSL shall adhere to a compliance program and internal-management systems that meet the standards of, and are approved by, the International Federation of Inspection Agencies (IFIA), and Bureau Veritas shall maintain its membership in IFIA;

(ii) CSL shall maintain a policy requiring its staff to remain objective and avoid conflicts of interest when conducting product testing;

(iii) CSL shall maintain internal auditing policies and conduct such audits pursuant to those policies;

(iv) CSL shall maintain external auditing policies, and its external auditors shall perform several functions, including conducting annual reviews and risk-based audit sampling on whether CSL's corporate-compliance programs and internal-management systems meet the IFIA ethical standards, and conducting investigations of ethics violations; and

(v) CSL shall maintain a Compliance Committee of its Board, as described in its submissions (see, e.g., OSHA-2009-0026-0014), to, among other duties, provide oversight to ensure that no affiliate of CSL exercises undue influence or pressure on any employee of CSL, and that there are no undue pressures to compromise CSL's NRTL testing and certifications.

(d) Upon completion of any audit (internal or external) required under Condition 4, CSL shall submit the results of that audit, and any reports generated as a result of that audit, to the third-party monitor and to OSHA.

5. Composition of Boards

Neither CSL nor BVCPS shall share common board members with Wendel, BVSA, or any other Wendel subsidiary.

6. OSHA Notification

CSL shall inform OSHA's Office of Technical Programs and Coordination Activities as soon as possible, in writing, of any change of ownership, facilities, or key personnel,

and any major change in its operations as an NRTL, and provide details of these change(s).

VI. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Section 8(g)(2) of 29 U.S.C. 651 et al., Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on April 16, 2014.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

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